As I pointed out in my prior opinion No. 2632, the two proceedings are separate and distinct and the assessments must be treated separately. On the other hand, however, both of the contracts have to do with the improvement of one road. This being the case, I feel that there is no inherent objection to the adoption of one resolution covering both of the agreements, providing the language of the resolution is such as to make it clear that the county is agreeing with respect to the separate matters contemplated. If the agreements may be combined in a single resolution, it necessarily follows that it will be sufficient to have one auditor's certificate. That is to say, the auditor may certify to the one resolution covering the county's agreement with respect to both of the matters.

It should be noted that Sections 1214-1 and 1200 of the General Code, supra, specifically state that a contract be entered into, Section 1214-1 providing that the contract shall be between the county commissioners and the Director of Highways and Section 1200 providing that it shall be between the county commissioners and the State of Ohio. I suggest, therefore, that it will be necessary in either case to have an express written contract in addition to the resolution concerning which you inquire.

In specific answer to your last inquiry, I am of the opinion that the two resolutions proposing to assume the obligation of levying special assessments for a state highway improvement, as authorized by Section 1214-1, General Code, and agreeing to cooperate with the state in the cost of widening the paved portion of a state road where the paved portion of the state road is constructed or reconstructed to a width greater than eighteen feet, as authorized by Section 1200 of the Code, may be combined and one auditor's certificate thereto will be sufficient.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2797.

MARRIAGE—CHRISTIAN SCIENCE READER MAY NOT SOLEMNIZE—LICENSING OF MINISTER DISCUSSED.

SYLLABUS:

1. *Under the present organization of the Christian Science Church, as set forth in its Manual, a "reader in such church is not entitled to the granting of a license to solemnize marriages by a Probate Court in this state.*

2. *A local congregation of the Christian Science Church cannot, by any action of its own, endue one of the "readers" of such church with such powers and functions as to entitle him to the granting of a license to solemnize marriages even though he had previously been ordained as a minister in another church from which he had withdrawn his membership before becoming a member and "reader" in the Christian Science Church.*

COLUMBUS, OHIO, October 29, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your recent communication requesting my opinion as follows:

"B was formerly an ordained minister in the United Brethren Church. He withdrew his membership from that church and became a member of the

Christian Science Church. He is now a reader in one of the local churches of the last named denomination. The local church of which B is now a member at one of its meetings adopted the following resolution:

'WHEREAS the Christian Science denomination does not issue a license to preach the gospel, but does require those of its members who desire to unite in marriage, to have the ceremony performed by an ordained minister.

THEREFORE, BE IT RESOLVED, that this Church, First Church of Christ, Scientist, Lima, Ohio, of which B is now a member, does hereby recognize the legal right of B to solemnize marriages because of his ordination while a minister in the United Brethren Church, and requests the Probate Court to continue said authority.'

1. May B solemnize marriages under the law of Ohio?
2. Is B entitled to a license under the provisions of Section 11183 of the General Code?"

Sections 11182 and 11183 of the General Code read as follows:

Sec. 11182. "An ordained or licensed minister of any religious society or congregation within this state, who has obtained a license for that purpose, as hereinafter provided * * * agreeably to the rules and regulations of their respective churches, may join together as husband and wife all persons not prohibited by law."

Sec. 11183. "A minister of the gospel, upon producing to the probate judge of any county within this state in which he officiates, credentials of his being a regularly ordained or licensed minister of any religious society or congregation, shall be entitled to receive from the court a license, authorizing him to solemnize marriages within this state so long as he continues a regular minister in such society or congregation."

It will be observed upon consideration of the foregoing statutes that, before a minister may solemnize marriages in this state, he must not only have been previously ordained or licensed as a minister by some religious society or congregation within the state, but must also, as such minister, obtain a license to perform marriages from the Probate Court in a county within the state. Before he is entitled to be granted a license by the Probate Court, he is required to produce to the Probate Judge credentials of his being a regularly ordained or licensed minister of a religious society or congregation, and the license, which is thereupon granted to him by the Probate Court, authorizes him to solemnize marriages only so long as he continues a regular minister in such society or congregation.

There can be no question but that the person, about whom you inquire, having been ordained in the United Brethren Church, was, during the time he was a minister in that church, eligible to be granted a license to solemnize marriages by a Probate Court, but any license granted to him during that time authorized him to solemnize marriages only so long as he continued to be a regular minister in that church. He, having withdrawn his membership in that church, of course ceased to be a minister therein. Any license that may have been granted on account of his being a minister in the United Brethren Church expired upon his withdrawal from membership in that church and does not now authorize him to solemnize marriages.

The question is whether or not, by reason of his present affiliation with the Christian Science Church as a "reader," or of the action of the local Christian Science congregation at Lima with reference to him, Mr. B. is now entitled to the granting of a license by the Probate Court of Allen County, or any county in the state.

It was held in *In re Reinhart,* 9 O. D. 441, that:

> "The license may be issued to officers of the Salvation Army, who are engaged under such authority in ministering in religious affairs, and to all Protestant ministers, Catholic priests, Jewish rabbis, teachers and ministers of spiritualistic philosophy, and to all who have been appointed or are recognized in the manner required by the regulations of their denominations, and are devoting themselves generally to the work of officiating and ministering in the religious interests and affairs of such society or bodies."

Ordination is defined by the Standard Dictionary as "the act or rite of admitting and setting apart to the Christian ministry or to holy orders, especially in the Roman Catholic, Anglican and Greek churches; consecration to the ministry by the laying on of hands of a bishop or bishops; in other churches consecration by a presbytery, synod or council of ministers."

In so far as the marriage laws of Ohio are concerned, however, the term "ordained minister" is not confined to the Christian church, but applies as well to Jewish rabbis and teachers or ministers of spiritualistic philosophy in any religious society. It was also held in In re Reinhart, supra, that:

> "And the term 'ordained minister,' in the marriage laws of Ohio, had no regard to any particular form of administering the rite or any special form of ceremony."

Ordination, in my opinion, connotes of more than the mere ceremony consecrating one to the ministry or holy orders, or setting one apart to the calling, and implies as well the consecration by the individual of his life and best powers with pure unselfish devotion and high character to his duties, and that ordination, once invoked, continues so long as the individual continues to be consecrated to the cause by a life of devotion thereto. Such an ordination once consummated is not divested or abated by a mere withdrawal from membership in any particular church organization, but continues so long as its attendant devotion exists.

Our statute, however, takes a view other than one authorizing the granting of a license to solemnize marriages to one who has merely been ordained, and requires that there must be coupled with this ordination the holding of a position importing the functions of a minister of the gospel. There must be both investiture and induction which confers on him the temporalities of the church. There is a distinction between being an ordained minister and being settled in the ministry of the church. 1 *Blackstone,* 388. This distinction was recognized by the court in the case of *Kibbe* vs. *Antrim,* 4 Conn. 134.

The question in that case was whether a marriage solemnized by a Methodist minister was valid and legal. The statutes in that state provided:

> "* * * that no person whatsoever in this state other than a magistrate or justice of the peace, and that within his own county or jurisdiction, or ordained minister, and that only in the county where he dwells, and during the time he continues settled in the work of the ministry, shall join any persons in marriage."

The question arose whether or not the minister in question was an ordained minister according to this statute. In dealing with the question the court said:

"To ordain, according to the etymology and general use of the term, signifies to appoint, to institute, to clothe with authority. When the word is applied to a clergyman, it means he has been invested with ministerial functions, or sacerdotal power. * * * Ordination, properly speaking, is restrained to the investiture of authority; and it is entirely owing to want of due discrimination that it ever has been carried further. In a state where the person ordained is invested with spiritual authority, and at the same time receives the charge of a particular church and congregation, it is not wonderful that all the rights of the clergyman, on the visible exercise of which he contemporaneously enters, should inaccurately be referred to his ordination. But in reality they are derived from different sources. His authority to preach the gospel and celebrate its ordinances results from the ordination of the clergy; but the right to perform his ministerial functions in a particular church depends *on compact,* and implies the assent of the persons over whom they are exercised. Hence it follows that the ordination of a clergyman remains after his separation from a church of which he once had the charge; and his spiritual authority continues although he is not settled over a particular congregation."

The term minister, when used in application to ecclesiastical affairs, is defined by Webster as:

"One duly authorized to serve at the altar or conduct Christian worship, one who performs sacerdotal duties, one duly authorized and licensed to preach the gospel and administer the sacraments, especially a pastor or clergyman."

Bouvier defines the term as applying to one ordained by some church to preach the gospel. Both these definitions when applied to our marriage laws are too narrow. Even as applied to laws exempting ministers from taxation it was held in *Baldwin* vs. *McClinnich,* 1 Greenl. (Me.) 102, that a person elected by a Methodist society to be one of its local pastors and ordained as a deacon of that church was a minister of the gospel within a statute exempting ministers from taxation.

In the able opinion in In re Reinhart, supra, rendered by Judge White, for many years Probate Judge in Cuyahoga County, it was said at pages 444 and 445:

"This law is to receive a liberal, and not a strict construction. Marriage is exclusively a civil contract, as viewed by the state. The statutes of Ohio undertake to prescribe the conditions of civil marriage, and provide a course of procedure for parties contracting it, and designate officers who may be authorized to officiate at its celebration and who are responsible to the state for the proper public registry of their official acts. In making these regulations, and especially in prescribing the qualifications of those who may solemnize the marriage ceremony, it makes no distinction or discrimination as to any particular religious form of ordination or religious belief or church affiliation. In designating the class who may receive the license to solemnize marriages, the section begins with the words 'any minister of the gospel.' Is this a description of exclusion or inclusion? If the section should be strictly and technically construed, on the generally received meaning of the expression 'minister of the gospel,' it would confine licensees exclusively to Christian ministers. Yet reading the whole section, and considering for a single moment the real purpose of the law, it is clear it should not receive such a narrow construction. Such an interpretation would deny the license to the

learned and reverend Jewish rabbi, and many other ministers of religion who, while not Christian in name, look upon marriage as a sacred and religious institution. The law here means to use the word 'gospel' in its broad general sense, and keeping in view the entire act and its manifest purpose, should be made to mean 'any minister of religion.'

It cannot be conceived that the use of the term 'ordained minister,' in the marriage laws of Ohio, has regard to any particular form of administering the rite, or any special form of ceremony. The moment an attempt is made to limit or restrict ordination to some special form or ceremony we begin to discriminate between the diverse modes and forms of ordination practiced by the various religious societies. The laws of Ohio make no discriminations in any respect, between Catholic or Protestant, Greek, Gentile, Jewish or any other religious societies or denominations; much less do they attempt to prescribe any mode or form of ministerial ordination. It has been the practice of this court, therefore, to grant the license to authorize the solemnization of marriages, to duly commissioned officers in the Salvation Army, who are engaged under such authority in ministering in religious affairs; to all Protestant ministers, Catholic priests, Jewish rabbis, teachers and ministers of spiritualistic philosophy, and in fact all persons who can prove to the satisfaction of the court that they have been duly appointed or recognized in the manner required by the regulations of their respective denominations, and are devoting themselves generally to the work of officiating and ministering in the religious interest and affairs of such societies or bodies. I cannot conceive of any other reasonable and just construction of this statute."

The Christian Science Church does not issue licenses to preach, and does not authorize the performance of any kind of ceremony that may be said in a technical sense to correspond to the rites of ordination in other denominations; yet they do by some mode of selection designate some persons to be "readers" at their congregational services and if these "readers" are endowed with powers corresponding to what is termed sacerdotal powers, or the power to conduct worship in other churches, or if what they do as "readers" amounts to ministering in religious affairs, there is, perhaps, little reason to deny them the classification that Judge White gives to "teachers and ministers of spiritualistic philosophy" and to those who "have been duly appointed or recognized in the manner required by the regulations of their respective denominations, and are devoting themselves generally to the work of officiating and ministering in the religious interest and affairs of such societies or bodies."

What is the import or efficacy of the resolution adopted by the local Scientist Congregation at Lima, which you quote. Clearly, no action of this association or church organization, with whom the person about which you inquire has become affiliated as a "reader," can have the effect of continuing any investiture or qualifications which he possessed as a minister in the United Brethren Church, from which his relationship has been severed by reason of his withdrawal from membership in that church. The reference in the resolution to his former affiliation with the United Brethren Church and his powers and authority, while so being a minister in that church, has no efficacy whatever to endue him with similar powers in the Scientist Church. His right to solemnize marriages under the license granted to him while a minister in the United Brethren Church has ceased and cannot be revived by action of the new organization, with which he has become affiliated, nor can any such action revive his former powers and qualities so as to entitle him to a new license based on this former attachment. If it amounts to anything at all, it does no farther than to recognize the former "ordination" and its continuance in a spiritual or professional

sense and to recognize his right to a license to solemnize marriages under the law by reason of his former ordination and his present position as a "reader" in the Christian Science Church.

The Christian Science Church in a corporate sense is not congregational in its make-up. That is to say, each local church organization is not an independent corporate entity, but is, as to church organization and discipline, if this latter term be appropriate, controlled by a parent church or society, and for that reason a *local* congregation cannot by passing resolutions or making declarations confer powers or invest its "readers" with powers not recognized by the parent or controlling society. For that reason, in my opinion, the effect of the resolution passed by the *local* Scientist Church society at Lima is nil and has no effect whatever on the authority or duty of the Probate Court to grant a license to the person about whom you inquire.

The question remains whether or not a "reader" in a Christian Science Church is a regularly ordained or licensed minister within the meaning of Sections 11182 and 11183, supra, and as such is entitled to the granting of a license to solemnize marriages by the Probate Court of any county in the state.

The answer to this question, it seems to me, is to be found in the rules of the organization itself, as set forth in its Manual. Whether or not a "reader" may be recognized as one who conducts the services of a Christian Science congregation, or is a teacher or minister of spiritualistic philosophy in the sense that Judge White speaks of such persons, is beside the question even though the rules of the society providing for the selection of such "readers" and fixing their powers and duties might be so interpreted, if the society itself by its regulations has precluded such interpretation.

Without reciting the manner by which "readers" in the Christian Science Church are selected and determining therefrom whether or not such manner of selection amounts to ordination under the law, or enumerating the rights, powers and duties of such "readers" as they are set forth in the rules and regulations of the society and determining whether by reason thereof such "readers" do conduct the worship, or are teachers or ministers of spiritualistic philosophy and thus may be classed the same as ministers of the gospel under the marriage laws, we need go no farther in my opinion than Article 9, Section 1, of the Christian Science Manual which provides:

> "If a Christian Scientist is to be married the ceremony shall be performed by a clergyman who is legally authorized."

At no place in the Manual are "readers" spoken of as clergymen. This fact alone is the best evidence that the society does not place its "readers" in a class who may be legally authorized to perform marriages. This may be because the society does not consider its method of selecting "readers" as amounting to ordination, or because its delegation of powers and duties to such "readers" does not in the society's opinion amount to investiture with such ministerial powers as are contemplated in the laws relating to marriage. In either event the interpretation placed on its own language by the society is the very best evidence and is conclusive of the limits of the functions attributable to officiating members and officers of the society. No court or public authority would be justified in extending the limits of the authority and powers of a "reader" in the Christian Science Church beyond that which the society itself has extended to him.

I am, therefore, of the opinion that the person about whom you inquire is not now legally authorized to perform marriages and is not entitled to a license from the Probate Court for that purpose.

Respectfully,

EDWARD C. TURNER,
Attorney General.